

LEASE ASSIGNMENT, ASSUMPTION, RELEASE AND INDEMNITY AGREEMENT

WHEREAS, Boeing Realty Corporation, a California corporation, as seller ("Seller") and Sares-Regis Group, a California general partnership, as buyer ("Buyer"), have entered into that certain Agreement for Development, Purchase and Sale of Real Property dated as of Feb 9, 2000, as amended by that certain Addendum thereto dated as of February 24, 2000, as further amended by that certain Second Addendum thereto dated as of March 5, 2000, and as further amended by that certain Third Addendum thereto dated as of Sept 6, 2000 ("Development Agreement"), concerning that certain real property identified as Parcels 15 through 20, inclusive, of Tract No. 52172-02, as filed in Book 1238, Pages 17-22, inclusive of Parcel Maps, in the Official Records of the County of Los Angeles, State of California ("Property"); and

WHEREAS, DFS Group, L.P., a Delaware limited partnership ("Tenant") desires to lease a portion of the Property, specifically, Parcel 2 of Lot Line Adjustment PMEX 99-2594, recorded December 20, 1999, as Instrument No. 2336326, Official Records of Los Angeles County, California ("LLA"), concerning the Property, commonly known as 1580 Francisco Street, Los Angeles, California ("Premises"), pursuant to the terms and conditions of that certain Standard Industrial Lease (Single Tenant - Triple Net) concerning the Premises and dated as of Sept 6, 2000, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference ("Lease"); and

WHEREAS, Tenant desires to execute the Lease before close of escrow for the sale of the Premises and the Property from Seller to Buyer under the Development Agreement ("Closing"); and

WHEREAS, Buyer has requested that Seller execute the Lease, as landlord, for the benefit of Buyer and as an accommodation to Buyer, and then assign the Lease to Buyer at the Closing (if any); and

WHEREAS, the Development Agreement requires that Seller construct certain improvements on the Property on the terms and conditions specified therein, as a condition to the Closing; and

WHEREAS, the Lease requires that certain improvements be constructed on the Premises; and

WHEREAS, Seller is willing to execute the Lease before the Closing as an accommodation to Buyer, but only if there is no cost or risk to Seller by so doing, on the terms and conditions hereafter set forth; and

WHEREAS, Buyer and Tenant are willing to execute, deliver and perform this agreement ("Assignment") as a material inducement for Seller to execute the Lease;

NOW, THEREFORE, the parties agree as follows:

1. **Assignment Prevails Over Lease, Development Agreement.** In the

event of any express conflict between the terms and conditions of the Lease and this Assignment, the terms and conditions of this Assignment shall prevail. Except as otherwise expressly provided herein, in the event of any express conflict between the terms and conditions of the Development Agreement and this Assignment, the terms and conditions of this Assignment shall prevail.

2. **Assignment.** Effective immediately as of and conditioned upon the Closing, Seller hereby assigns, conveys, quitclaims and remises to Buyer all of Seller's right, title and interest in, to and under the Lease. The assignment of the Lease hereunder is made "AS IS" "WHERE IS" "IF IS", and Seller makes absolutely no representations or warranties of any kind or nature regarding its title to the Lease or any other matter concerning the Lease (except that Seller represents that Seller's execution and delivery of the Lease and this Assignment have been duly authorized).

3. **Assumption.** Effective immediately as of and conditioned upon the Closing, Buyer hereby assumes and agrees to fully and timely pay and perform each, any and all obligations of Seller and/or landlord under the Lease, whether accruing before, at or after the Closing, and whether or not now or hereafter known or unknown, discovered or undiscoverable, excluding only construction warranty, indemnity and all other liabilities of Seller under the Development Agreement which survive the Closing pursuant to the terms of the Development Agreement (collectively, "Liabilities").

4. **Release.** Tenant hereby consents to the assignment of the Lease described herein, and, effective immediately as of and conditioned upon the Closing, Tenant and Buyer each hereby forever releases and discharges Seller, its agents, employees, officers, directors, shareholders, subsidiaries and affiliates (jointly and severally herein, "Seller Parties"), from any and all Liabilities and/or any and all other liability or claims of whatsoever kind or nature in any manner or way relating to or connected with the Lease, the Premises, or any other matter (except as to Buyer only, to the extent of any express representations or warranties of Seller in favor of Buyer under the Development Agreement and all other rights, indemnification and other Seller obligations and construction warranty(ies) in favor of Buyer under the Development Agreement, but only to the extent the foregoing expressly survive the Closing pursuant to the terms of the Development Agreement). Tenant covenants, represents and warrants that, from and after the Closing (and provided that Closing occurs), it shall have and seek recourse solely against Buyer (and not against Seller) as to any Liabilities or other matters concerning the Lease or the Premises. In making the aforesaid general release, Tenant and Buyer each acknowledges, understands and knowingly waives any and all rights and benefits which it now has, or in the future may have, conferred upon Tenant or Buyer by virtue of the provisions of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

5. **Indemnity.** Buyer hereby agrees to indemnify, defend (with legal counsel selected by Seller), and hold harmless Seller Parties, and each of them, from and against any and all claims, actions, causes of action, losses, obligations, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs) (collectively, "Claims") in any manner or way relating to, arising out of, or connected with Seller's execution of the Lease, Tenant's or its agent(s)', contractor(s)' or designee(s)' entry(ies) onto the Premises or Property or performance of any work thereon prior to the Closing pursuant to the Lease, and/or any Claims now or hereafter made by Tenant (or any of its successors or assigns) against Seller in connection with the Lease or the Premises. Buyer's duty to defend Seller Parties shall include the duty to defend Seller Parties against any and all Claims which raise any potential for indemnification under this Section 5, and regardless of whether such Claims are false, frivolous or groundless. Notwithstanding the foregoing, Buyer shall not indemnify, defend or hold harmless Seller Parties from and against any Claims (a) to the extent caused by the intentional or grossly negligent misconduct of Seller, (b) to the extent caused by breach of the Development Agreement by Seller (including without limitation any indemnification, environmental or other obligations of Seller under the Development Agreement which survive the Closing pursuant to the terms of the Development Agreement), or (c) to the extent caused by alleged nonperformance or breach of Seller's or Tenant's obligations under the Lease after such time as the Development Agreement has been terminated without the Closing thereunder having occurred.

6. **Overriding Provisions.** Notwithstanding any contrary provision of the Lease or the Development Agreement to the contrary, so long as the Closing has not occurred and the Lease has not been assigned by Seller to Buyer, and so long as the Development Agreement has not been terminated:

(a) Only Buyer (pursuant to the terms and conditions of the Development Agreement), and not Tenant, shall have the right to approve and accept the construction and completion of Landlord's Work (as defined in the Lease) and/or the construction of the Improvements (as defined in the Development Agreement). As to Seller, Buyer's approval(s) and acceptance(s) of said Landlord's Work and/or Improvements shall be and remain conclusive and binding upon Tenant under the Lease (whether or not the Closing ultimately occurs, and whether or not the Lease is ultimately assigned to Buyer);

(b) Seller, Buyer and Tenant must each approve the Final Space Plan, the Final Working Drawings, the Approved Working Drawings, the Construction Drawings, any Change, Landlord's Plans and Specifications, the Above-Standard Improvement Budget, the Above-Standard Improvement Costs, all Tenant Improvement Costs, the Contractor, the Contract and the Final Costs (as each such capitalized term is defined in the Lease);

(c) The "Landlord" under the Lease (whether Buyer or Seller) at the time the Allowance Amount (as defined in the Lease) and/or any and all delay damages specified under Section 5.2 of Exhibit "B" to the Lease become due and payable to Tenant (if any) shall pay such amounts pursuant to the terms and provisions of the Lease; provided, however, that if Seller is the "Landlord" under the Lease at the time of a

request for payment of same by Tenant, such payment(s) to Tenant shall in no event be payable to Tenant prior to the earlier of two (2) business days after Seller's receipt of such funds from Buyer as hereafter described, or twelve (12) business days after request therefor by Tenant (if Buyer fails to pay Seller such funds). Seller shall give prompt written notice to Buyer of Seller's receipt of any claim from Tenant that amounts are owing to Tenant for any of the matters described in the preceding sentence, and (so long as the Development Agreement has not then been terminated in accordance with its terms) Buyer shall pay to Seller such amounts within ten (10) business days after Buyer's receipt of such written notice from Seller. In the event that Buyer fails to pay to Tenant in cash any amounts claimed by Tenant as due and owing under for the aforesaid items within ten (10) business days after Seller's demand for such payment and Tenant claims that such failure would cause a landlord default under the Lease, Buyer shall conclusively be deemed to be in breach of the Development Agreement, Seller may terminate the Development Agreement due to Buyer's breach thereof, Seller may draw the full amount of the letter of credit delivered by Buyer to Seller thereunder as the Deposit, and Seller may retain such proceeds as liquidated damages for Buyer's breach of the Development Agreement. If, after such payment(s) by Buyer to Seller, the Closing under the Development Agreement fails to occur due to failure of a condition precedent to said Closing, then Seller shall reimburse Buyer (within ten (10) business days after termination of the Development Agreement for failure of a condition precedent thereto) for any and all amounts paid by Buyer to Seller for the Allowance Amount under this subsection (but Seller shall not reimburse Buyer for any amounts paid by Buyer to Seller for delay damages under this subsection). If, after such payment(s) by Buyer to Seller, the Closing under the Development Agreement fails to occur due to breach of the Development Agreement by Buyer, then Seller shall retain any and all amounts paid by Buyer to Seller under this subsection, in addition to retaining the full liquidated damages payable to Seller under the Development Agreement.

(d) As to Seller, the Supervision Fee under Section 4.1 of Exhibit B to the Lease shall not be limited to \$25,000; rather, the Supervision Fee shall be an amount equal to (and Buyer agrees to reimburse Seller within five (5) business days after request therefor from Seller) for all of Seller's out-of-pocket fees and costs incurred in having Seller representatives and/or third party consultants review, consider, analyze and supervise the Tenant Improvements (as defined in Exhibit B to the Lease), including without limitation plans incident thereto and construction thereof, plus an administrative fee of \$15,000.00. Notwithstanding the foregoing, Buyer and Tenant shall not be liable to Seller for any expenses incurred by Seller due to Seller's gross negligence or breach of the Development Agreement;

(e) Notwithstanding any contrary provision of the Lease, in the event that any of the Tenant Improvements (including without limitation HVAC or other systems) will be installed on the Premises roof or require penetration(s) of the Premises roof, Tenant represents and warrants that prior to commencing such Tenant Improvements, Tenant will deliver to Landlord a roof engineering report (in form and content acceptable to Landlord in its sole discretion) confirming that any load(s) which Tenant proposes to place on the Premises roof and/or proposed penetrations thereof will not impair the structural integrity of the Premises roof, and Tenant (and not Landlord) shall be solely liable to pay for (or at Landlord's sole election, to reimburse Landlord

upon demand for) any and all Premises roof maintenance, repair and/or replacement, and any liabilities incurred by Landlord, to the extent the foregoing are caused by Tenant's placing of loads on the roof or penetration(s) of same;

(f) Notwithstanding any contrary provision of the Lease, Seller makes no representations or warranties regarding the number of parking spaces which Tenant may be allowed to stripe or maintain within the parking area designated on Exhibit A-3 to the Lease;

(g) Buyer, Seller and Tenant acknowledge and agree that the LLA contains an error in that the Lot Line Adjustment Map attached as Exhibit B to the recorded LLA ("**Recorded LLA Map**") does not accurately reflect the dimensions of the Parcel 2 and Parcel 3 therein (as compared to the approved Site Plan for said parcels), the square footages set forth on said map are in error (as compared to said approved Site Plan), and the legal descriptions of Parcel 2 and Parcel 3 as set forth in the LLA are in error (as compared to said approved Site Plan). Buyer and Tenant acknowledge and agree that Seller (at Seller's sole cost) shall amend the LLA before the Closing and as soon as practicable to relocate and correct the legal description of the west boundary of Parcel 2 parallel to its position as reflected on the Recorded LLA Map and approximately thirty six (36) feet to the east, all as more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference ("**Correction**"). The Lease and this Assignment shall cover Parcel 2 of said LLA, as amended by said Correction (i.e., the "Premises" as defined herein and in the Lease shall be said Parcel 2, as constituted after the Correction is recorded); and

(h) Tenant is hereby advised that there are numerous oil, water and other subterranean pipelines and related facilities located on, under or near the southernmost thirty (30) feet of the Premises (including without limitation a 21 inch oil pipeline), and that Tenant may not erect any structures or improvements or deposit, grade or remove any soil over said pipeline easements without the consent of the easement holders of said pipeline easements.

7. Seller's Obligation to Construct Landlord's Work, Schedule.

Notwithstanding any contrary provision of the Lease, Seller's sole obligation to construct Landlord's Work (or any portion thereof) shall be to use commercially reasonable efforts to construct the same within the Time Schedule (as defined in the Lease), and provided that Seller has used such commercially reasonable efforts, in no event shall Seller be deemed to be in breach of the Lease (or the Development Agreement) or be liable to Tenant or Buyer for any damages or remedies for failure to meet any deadlines set forth in the Time Schedule (regardless of the reason(s) for such delay(s) in completing Landlord's Work or any portion thereof). Buyer, Seller and Tenant acknowledge and agree that Seller's satisfaction of its construction obligations under the Development Agreement, as amended by that certain Third Addendum to Agreement for Purchase and Sale of Property of even date herewith among Buyer, Seller and Tenant, shall conclusively satisfy each and all of Seller's obligations under the Lease to construct Landlord's Work or any portion thereof.

8. Inducement. Buyer and Tenant each acknowledges and agrees that

Seller is executing the Lease solely as an accommodation to Buyer and Tenant and pursuant to their request, and that Seller would not execute the Lease without the protections and provisions set forth in this Assignment.

9. **No Closing.** In the event that the Closing does not occur under the Development Agreement for any reason(s), then Buyer, Seller and Tenant acknowledge and agree that the Lease shall be and remain a binding contract and agreement between Seller and Tenant (as amended hereby). Tenant acknowledges and agrees that Seller has made absolutely no representations or warranties of any kind or nature in favor of Tenant, except as expressly set forth in the Lease, and that Tenant is leasing the Premises (as to Seller only) "AS IS" "WHERE IS" AND "WITH ALL FAULTS"; provided, however, that Tenant shall be entitled to enforce the construction warranty(ies) being assigned to Tenant in accordance with the provisions of the Lease, and so long as Seller is landlord under the Lease, Tenant shall be entitled to directly enforce the limited Seller construction warranty under Development Agreement section 10.4.3.

10. **Counsel.** The undersigned hereby certify that they have read all of the foregoing Assignment, have conferred with counsel pertaining to the same, and fully understand all of the terms hereof, and the parties acknowledge and represent that they enter into this Assignment and all of the contemplated documents of their own free will and not due to any representation, commitment, promise, pressure or duress from any other party.

11. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Assignment may not be assigned, in whole or in part, by Buyer (except in accordance with an assignment made in accordance with the terms of the Development Agreement) or Tenant without the prior written consent of Seller, which may be withheld in its sole and absolute discretion, and any purported assignment in violation of the foregoing shall be an immediate material breach of this Assignment.

12. **No Third Parties Benefitted.** This Assignment is made and entered into for the sole protection and benefit of the parties hereto, and their permitted successors and assigns, and no other person or persons shall have any right of action hereon or be a third party beneficiary of this Assignment or any of the agreements or instruments called for herein.

13. **No Waiver.** No waiver by any party of any default or breach by any other party of any representation, warranty, covenant or other obligation in connection with any of this Assignment shall be implied from any failure to take action on account of such default, even if such default persists or is repeated. No express waiver in writing shall affect any default or breach other than the default or breach referenced therein, and any such waiver shall be operative only for the time and to the extent therein stated.

14. **Headings.** All headings appearing herein are for convenience only and shall be disregarded in construing the substantive provisions of this Assignment.

15. **Time.** Time is of the essence of each and every provision of this Assignment.

16. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

17. **Attorneys' Fees, Costs, Expenses.** In the event that any party to this Assignment should retain an attorney as a result of any dispute(s) arising out of or in any way connected with this Assignment (including without limitation any tort, contract or non-contract claims, disputes to enforce or interpret any provision of, or to declare any rights under, this Assignment, or otherwise), the prevailing party in any such dispute (whether by way of judgment, arbitration award, mediation, settlement, dismissal(s) of claims, or otherwise), shall be entitled to collect from the other party(ies) all of its fees and costs, including, without limitation, reasonable attorneys' fees, costs and expenses, incurred in connection with said dispute(s), whether or not suit is instituted and/or dismissed, and including without limitation any causes of action for injunctive and/or declaratory relief and/or any and all such fees and costs in connection with any appeal(s).

18. **WAIVER OF JURY TRIAL.** AS A MATERIAL INDUCEMENT TO SELLER TO ENTER THIS ASSIGNMENT, BUYER, SELLER AND TENANT EACH HEREBY WAIVES ITS RIGHT(S) TO TRIAL BY JURY (IF ANY) IN ANY LAWSUIT OR ACTION BY OR AGAINST SELLER, INCLUDING BUT NOT LIMITED TO, ANY AND ALL CONTRACT AND TORT CLAIMS.

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19. **Integration.** This Assignment is the sole, entire, integrated and complete agreement of the parties relating in any way to the subject matter hereof, and any and all prior and/or contemporaneous negotiations, communications and understandings are merged herein and are hereafter null and void to the extent not expressly set forth herein. No statements, promises or representations have been made by any of the parties or their counsel to any other of the parties or their counsel, or been relied upon, and no consideration has been or is offered, promised, expected or held out, other than as set forth in this Assignment. This Assignment may not be altered, amended or modified except by a writing which expressly refers to this Assignment and is signed by whichever of the parties is to be charged.

20. **Choice of Law.** This Assignment is entered into and shall be construed, governed, interpreted and enforced in accordance with the laws of the State of California.

21. **Further Assurances.** Each of the parties hereto shall make, execute and deliver such documents and agreements and shall undertake such other and further actions as may be reasonably necessary to carry out the intent of the parties hereto as expressed in this Assignment.

22. **Severability.** In the event that any one or more provisions of this Assignment are found to be unenforceable, the remainder of this Assignment shall nonetheless be and remain valid and enforceable, unless the basic purposes of this Assignment are frustrated thereby.

[SEE ATTACHED SIGNATURE PAGE]

**SIGNATURE PAGE FOR LEASE ASSIGNMENT, ASSUMPTION, RELEASE AND
INDEMNITY AGREEMENT**

Dated: September 2000

SELLER:

BOEING REALTY CORPORATION

By: 

STEPHEN J. BARKER

Its: DIRECTOR-BUSINESS OPERATIONS

BUYER:

SARES-REGIS GROUP,
a California general partnership

By: **SARES COMPANY,**

a California corporation,
as general partner

By: 

Its: Secretary

TENANT:

DFS GROUP, L.P.,
A Delaware limited partnership

By: 

Its: Vice President, Finance

EXHIBIT "A"
(THE LEASE)